
STATEMENT OF FACTS,

**RELATING TO A PRIVATE AND
TOWN WAY**

IN THE TOWN OF MEDFORD.

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Robert J. ...



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10-32

TO THE CITIZENS OF THE TOWN OF MEDFORD.

THE subscriber having received notice from the Selectmen of the town of Medford of their intention to lay out a *town way* over his land, and the subject matter of said way, not as a *town way*, but as a *private way*, having been frequently considered; and much misapprehension existing, as the subscriber believes, in relation to the proceedings and the rights of the parties concerned, he respectfully submits to his fellow citizens, the facts in the case.

Three several petitions have been presented to the Selectmen by John Symmes, Marshall Symmes, and others, for a private way for their use over the subscriber's land. The first petition was dated July 7th 1840, and will be found appended. (Marked No. 1.)

The Selectmen attended to this petition, viewed the premises and heard the parties, and no further action was had thereon, as will appear from the second petition.

The second petition was dated the 6th of August 1840, and is also appended. (Marked No. 2.)

The Selectmen again met, viewed the premises, heard the parties, and no further action was had thereon, as will appear by the *third* petition.

The third petition was dated March 11, 1841. On the 20th of March the Selectmen met to view the premises for the third time. At that meeting the subscriber submitted to the Selectmen his affidavit, dated March 20th, which is also annexed. (Marked No. 4.) The Selectmen heard the parties, and no further action has been had on said application, but the subscriber has been notified by the Selectmen, that they propose to lay out a *town way*. Their notice, dated March 22, 1841, is as follows.

Notice is hereby Given, that the subscribers, Selectmen of Medford, in the county of Middlesex, propose to lay out a *Town way* from Grove street in said Medford to the Southerly part or branch of Symmes' River, so called, near the sash factory occupied by Joseph Gould, and nearly in the route of the private way now leading from said street to Robert Bacon's hat factory, and over lands of the heirs of Josiah Symmes, deceased, and of the Boston and Lowell Rail Road Corporation, and of Robert Bacon, and that said Selectmen will meet for that purpose on Monday, the 29th day of March inst. at two o'clock P. M. in said Grove street at the entrance of said private way leading to said hat factory.

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| ALEXANDER GREGG, | } Selectmen of Medford. |
| JAMES W. BROOKS, | |
| JUDAH LORING, | |

Medford, March 22d, 1841.

It will be perceived that the notice now issued to the subscriber, is for the laying out of a *town way*. He is informed by the counsel for the private petitioners that there has been no petition for a town way, nor has he had any notice of such. All the petitions have been for a private way. The last petition is

signed by John Symmes and Marshall Symmes, and is for a private way for their use alone. All the notices previously issued upon the three several petitions were for a private way as will be seen by the Notices which are appended. (Marked No. 5, No. 6, and No. 7.) The subscriber is not aware of any interest the town can have in establishing and maintaining such a way as is proposed.

He also believes that the several petitions for a private way, having uniformly been found insufficient to authorize it, it would not be granted in that form, upon a full knowledge of the facts.

The present petitioners, John and Marshall Symmes, have for more than ten years past enjoyed the use of his private way, by suffrage free from expense, and were offered the same freely, at the two first hearings before the Selectmen, but the subscriber was not willing then, nor is he now, to give up the control of his own private way, where no public interest requires it. This right of way was granted to him, by the town in 1828, and the way was built and has been maintained by him, at great expense. The documents appended, (Marked No. 8, 9, and 10) will show his original right to this way, which the proposed road, if laid out, would in effect take from him. The certificate of the Selectmen in 1835, and the opinion of the counsel who is now for the petitioners, will show that the right of the private way the subscriber now enjoys was fully and legally secured to him.

The subscriber is also prepared to show by original deeds, that the petitioners now have a right of way, and that a better way than the one asked for in their petition may be laid out.

With these facts he leaves it to his fellow citizens to consider the merits of the question, if it shall come before them in Town Meeting, to approve or disapprove the laying out of the proposed town way, reserving to himself all his legal rights in the premises.

ROBERT BACON.

Medford, March 25, 1841.

[NO. I.] *To the Gentlemen, the Selectmen of the town of Medford, in the County of Middlesex.*

The petition of Elizabeth Symmes, John Symmes, Marshall Symmes, and Edmund Symmes, all of said Medford, and Ebenezer Symmes of said Medford and Charles Symmes of and Loring Emerson of Woburn in said County of Middlesex, respectfully show, that they are seized of and hold several pieces of land situated in said Medford, betwixt the Boston and Lowell Rail Road and Symmes' River, so called; that is to say the said Elizabeth, thirteen acres, part of the real estate of her late husband, John Symmes, deceased, by virtue of his last will, for and during her life, and the said John, Marshall, Edmund, Ebenezer, and Charles, the remainder in said thirteen acres in fee by virtue of the same will, and the said John, Marshall, and Edmund, another piece there containing five acres, and the said John and Marshall another piece containing nine acres, and the said Emerson another piece containing five acres, that the former way leading from High street to their said lands has been partially interrupted by the said Rail Road, and turned along on the North side thereof as far as the passage way under said Rail Road now used by Robert Bacon, and others, where it

turns and passes under said Rail Road to the south side thereof, to land of said Bacon from whence your petitioners have no convenient way to Grove street, and they request you, gentlemen, to lay out one for their use, to begin on said Grove street, at or near the way now used by said Bacon, and that formerly used by the petitioners, and from thence over lands of said Bacon, and of Josiah Symmes, of Woburn, aforesaid, so as to meet and connect with their way under said Rail Road, as aforesaid, agreeably to the form of the statute in such cases made and provided.

Dated at Medford, July 7, 1840.

Signed,

ELIZABETH SYMMES,

MARSHALL SYMMES, JOHN SYMMES,

EDMUND SYMMES, EBENEZER SYMMES,

CHARLES SYMMES, LORING EMERSON.

By ABNER BARTLETT, their Attorney.

A true copy, attest, C. N. BACON.

[NO. II.] *To the Selectmen of the Town of Medford, in the County of Middlesex.*

Elizabeth Symmes, John Symmes, Marshall Symmes, and Edmund Symmes, inhabitants of said Town, respectfully represent, that they are interested in and hold certain lands situated in said Medford, betwixt the Boston and Lowell Rail Road, and Symmes' River, so called, that is to say, the said Elizabeth as devisee as and by the last will of her late husband, John Symmes, of said Medford, gentleman, deceased, is seized of thirteen acres there for the term of her natural life, and the said John, Marshall, and Edmund, as devisees in and by the same will are seized of three undivided fifth parts of and in the remainder thereof in fee simple, and also of another piece there containing five acres, and the said John and Marshall are seized of another piece there containing nine acres, that all said proprietors have no convenient ways from their respective lands out towards the public highway called Grove street, in said Medford, as far as the Easterly line of the said nine acre lot, of the said John and Marshall aforesaid, between which line and said street, their former way is interrupted by said Rail Road, and although the said John and Marshall have a way from thence along on the northerly side of said Rail Road, over land heretofore granted by them to Robert Bacon, as far as the westerly line of land heretofore owned by Abel Stowell, now belonging to said Bacon, yet none of the said proprietors have now any convenient way from their said lands quite out to said Public Highway or street, they therefore request you, gentlemen, to lay out a way from the easterly line of said nine acre lot, over land of said Bacon, to the westerly line of the said Stowell land for the accommodation of the said Elizabeth and Edmund, and from thence over land of said Bacon and land of said Rail Road Corporation, and of Josiah Symmes, to said Grove street, for the accommodation of all said Petitioners, at or near the point where the way now used by said Bacon enters said street.

ELIZABETH SYMMES,

JOHN SYMMES,

MARSHALL SYMMES,
EDMUND SYMMES.

By ABNER BARTLETT, their Attorney.

A true copy : attest, C. N. BACON.

Medford, August 6th, 1840.

[NO. III.] *To the Selectmen of the town of Medford, in the County of Middlesex.*

John Symmes and Marshall Symmes, both of said Medford, Yeomen, respectfully represent that they are seized of and hold together in fee, as tenants in common, a piece of pasture and tillage land, containing nine acres, situated in the north westerly part of said town of Medford, betwixt the Boston and Lowell Rail Road, and Symmes river so called, also two undivided fifth parts of the remainder in fee, of another piece of land, there adjoining to said nine acre lot, subject to the life estate of Elizabeth Symmes, widow of John Symmes, deceased,—also two undivided third parts of another piece of land there adjoining to said thirteen acre piece, that their ancient way, leading from the public highway, now Grove Street in said Medford, to their said lands has been intercepted by the passage of the said Rail Road, and although they have now a convenient way from their said lands along on the northerly side of said Rail Road, over land heretofore conveyed by them to Robert Bacon as reserved and mentioned in their deed of said land to him, bearing date 25th May, 1835, as far towards the east as that lot extends, viz : to the westerly line of land heretofore owned by Abel Stowell, now belonging to said Bacon, from which last mentioned line your petitioners have no entire way out to said Grove Street ; wherefore they request you, gentlemen, to lay them out one, to begin upon said Grove Street, at or near the point where the way now used by said Bacon enters said Street, near where the said ancient way used by your petitioners entered said Street, and from thence over land of said Bacon, or of the heirs of Josiah Symmes deceased, or of both, and lands of the proprietors of said Rail Road, to the easterly side of the said land, conveyed by the said John and Marshall to said Bacon on the north easterly side of said Rail Road above mentioned, at the easterly end of their said way, reserved in their said deed above mentioned, agreeably to the form of the Statutes in such case made and provided. Dated at Medford the eleventh day of March, 1841.

Signed, MARSHALL SYMMES,
JOHN SYMMES.

A true copy, attest, N. BACON.

[NO. IV.] *Affidavit of Robert Bacon to be used before the Selectmen of Medford on the application of John and Marshall Symmes for a private road.*

In 1835 I called on Mr. Patrick T. Jackson to buy some land he had to sell near my premises. He told me he would not sell the land without the Stowell place. I could not agree with him for the Stowell place, and left him. I then asked Dea. John Symmes to buy the land, and I would take part of it. He told me his brother Marshall would like part of it. I then told him to buy it, and I would take one third part of it ; that part which joined my premises, and pay the difference. I paid thirty-three and one third per cent. more than the average cost. I gave

Dea. John Symmes two hundred and fifty dollars, (which was more than enough to pay my part of it) before he got his deed. After they got their deed they had me surveyed about one quarter part of it. They then claimed of me the right to pass over my land. I remonstrated against it. I told them whoever bought the Stowell place would probably build, and that would cut them off, and if I bought, I certainly should. Dea. John Symmes has claimed for himself and others the right to pass over the land I bought of Gould and Pierce, and the land the south side of the bridge, also a right to pass over my bridge, over land I bought of Stowell, and over land I bought of Samuel Hutchinson and Rev. Mr. Coggin. Also to cross the river over land he bought of Patrick T. Jackson for me. All my deeds deny any and all the claims he makes. Dea. Symmes shows deed from William Symmes to his son John Symmes, dated the 16th of June A. D. 1761. Extract from said deed—'with liberty of passing and re-passing to the same when will be convenient and will do the least damage.' When I first stated to Dea. Symmes that I was going to build, I observed to him that Mr. Johnson had a piece of land he wanted to sell, joining their land and fronting Grove Street. I proposed he should buy the land and sell that adjoining me (meaning the land north of the Rail Road ;) if he did not find a purchaser on the west side, although I did not want it, I would buy it of him. He said I had no right to build on my premises. I proposed to him to put both of our deeds into the hands of a disinterested person, he to determine our rights. Sometime before I commenced building, one morning as I was in conversation with him, I invited him to come to my house that evening with his wife, or I would come to his with mine, and talk over the subject of our rights, observing that our wives would keep us cool. I agreed to call on him with my wife. I came home and told my wife on my return from Boston, she must go with me in the evening to Dea. Symmes, and told her what for. In about one hour I started for Boston. When I got near the blacksmith's shop, John and Marshall Symmes accompanied by a gentleman I did not know, came out and forbid my building in the presence of said gentleman. Marshall Symmes said I was robbing him and taking the bread out of his children's mouths. Dea. Symmes said to me, you have quarreled with every one of your neighbors, and said he was in hopes to live in peace with me. I pointed to Capt. La Bosquet's, and asked him if I had ever quarreled with him. I consulted my professional friend and he advised me to build as I have done.

ROBERT BACON.

Sworn to before B. RAND, Justice of the Peace.

March 20th, 1841.

[NO V.] *To Robert Bacon, of Medford, in the County of Middlesex.*

You are hereby notified that application has been made to us, the subscribers, Selectmen of the Town of Medford, to lay out a way for the use of Elizabeth Symmes, John Symmes, Marshall Symmes, Edmund Symmes, Ebenezer Symmes, Charles Symmes, and Loring Emerson, to begin on Grove street, in said Medford, at or near the road now used by you, and that formerly used by the said applicants, and to extend from thence northerly over your land, and land of Josiah Symmes, to the Boston and Lowell

Rail Road, so as to meet and connect with the passage way under said Rail Road, now used by yourself and others; and through which the said applicants have a way leading to their respective lands situated betwixt said Rail Road and Symmes' River.

And we have appointed Wednesday, the twenty-second day of July, now current, at two o'clock P. M., to meet on the premises to lay out the same, when and where you will attend if you see cause.

Given under our hands at Medford, the eighth day of July, 1840.

T. R. PECK,
MILTON JAMES,
JAMES O. CURTIS.

[NO. VI.] *To Robert Bacon, of Medford.*

Whereas, Elizabeth Symmes, John Symmes, Marshall Symmes, and Edmund Symmes, inhabitants of Medford, in the County of Middlesex, have made application to us, the Selectmen of said Town of Medford, to lay out a road from their lands situated in said Medford, betwixt the Boston and Lowell Rail Road, and Symmes' River, so called, over lands of Robert Bacon, land of said Rail Road Corporation, and of Josiah Symmes, to Grove street, in said Medford. You are hereby notified that the said Selectmen will meet to consider and act upon said application at the bridge where said railroad crosses the road leading from said Grove street to Robert Bacon's factory, in said Medford, on the twenty-fourth day of August, at 2 o'clock, P. M.

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| T. R. PECK, | } | Selectmen of Medford. |
| MILTON JAMES, | | |
| JAMES O. CURTS. | | |

NO. VII.] *To Robert Bacon, of Medford, in the County of Middlesex.*

Whereas, John Symmes, and Marshall Symmes, both of said Medford, have made application to the subscribers, Selectmen of said Medford, to lay out a way for them from Grove street, in said Medford, over lands of Robert Bacon, and land of the heirs of Josiah Symmes, late of said Medford, deceased, and lands of the Boston and Lowell Rail Road Corporation, to the lands of said petitioners, situated in said Medford, betwixt the said Rail Road and Symmes' River, so called.

You are hereby notified that said Selectmen will meet for that purpose in Grove street, in said Medford, where the road leading from said Bacon's hat factory enters the said street, on Saturday, the twentieth day of March, 1841, at 2 o'clock, P. M.

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| ALEXANDER GREGG, | } | Selectmen of Medford. |
| JAMES W. BROOKS, | | |
| JUDAH LORING. | | |

Medford, March 12th, 1841.

[NO. VIII.] At a legal Town Meeting in Medford, on the first Monday of November, one thousand eight hundred and twenty-eight, to hear and act upon the doings of the Selectmen relative to laying out a road from Robert Bacon's hat factory in

said Medford, to the highway leading by Capt. John Symmes' dwelling-house, to the market place, agreeable to the petition of said Bacon.

The Selectmen laid before the Town the following proceedings: ' *To the Selectmen of the Town of Medford, in the County of Middlesex.* The petition of Robert Bacon, of Boston, in the County of Suffolk, latter, respectfully represents, that he is the owner of a piece of land, and water-mill privilege in said Medford, with a dwelling-house and other buildings and machinery thereon, which he improves for the manufacture of hats; that his said establishment is situated a little to the north of the highway leading by the dwelling house of Capt. John Symmes, in said Medford, to the market-place there; that he has no convenient way to pass from his said establishment and highway—he therefore requests the Selectmen to lay out a way from his said establishment, beginning a little below the dam, at his land, running in a southerly direction to the highway aforesaid, at or near the great gate, opening from said highway into land of Josiah Symmes, agreeable to the form of the statute in such case provided.

ROBERT BACON.

Medford, Sept. 30, 1823.

Town of Medford, October 30th, A. D. 1823.

We, the undersigned, Selectmen of Medford, upon the foregoing petition proceeded to view the route of the road therein prayed for, having first duly notified the proprietors of the lands situated in said route, viz: Josiah Symmes, and Abel Stowell, who met with us on the occasion, and after due consideration of the subject, and of all suggestions and representations made to us relative thereto, being of opinion that the prayer of the petition was reasonable and ought to be granted, we have laid out a private way for the use of said Bacon, as follows, viz: beginning at a stake on his land on the northerly side of the run of water belonging to said Stowell, a little to the east of the bridge, and from thence we run a line southerly over land of said Stowell, to a stake by land of Josiah Symmes, to the east of the gate in said Stowell's fence, from thence nearly in the same course over land of said Symmes, to a cedar tree standing about a foot from, and next to, the easterly gate, part of the great gate which opens into the highway leading by the dwelling-house of Capt. John Symmes, as mentioned in said petition, and we have laid out said private way on the westerly side of said line, run as aforesaid, over the land of said Stowell, twenty feet wide in every part, excepting only such place or places as may be straitened or narrowed by some building or buildings, now standing partly thereon, and over said Symmes' land the whole width or space between said line, run as aforesaid, and the land of Samuel Hutchinson, on the west thereof.

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| TURELL TUFTS, | } Selectmen of Medford.' |
| JOHN P. CLISBY, | |
| LEONARD BUCKNAM. | |

All which proceedings and doings of the Selectmen having been read and duly considered by the Town,

Voted, that the same be accepted and recorded.

A copy of the Town Book of Records in the Town of Medford.

ABNER BARTLETT, Town Clerk.

[NO. IX.] *To whom it may concern.*

The Selectmen of Medford hereby certify, that the said road leading from the highway to Robert Bacon's hat factory in Medford, was laid out as a private way for his special use and benefit, and that the town of Medford have no interest therein which can interfere with said Bacon's enjoyment and control thereof, and are under no obligation to support or maintain it.

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| TIMOTHY COTTING, | } Selectmen of Medford. |
| ISAAC WELLINGTON, | |
| ISAAC SPRAGUE, | |
| S. BLANCHARD, | |

[NO. X.] *Medford, March 31st, 1835.*

MR. ROBERT BACON :—*Dear Sir.* In answer to your inquiry relative to your road leading from your house into the public highway in Medford ; I can state for the information of all concerned, that the road was duly laid out by the Selectmen of Medford on your application as a private way for your use and benefit. It was done according to the form of the Statutes in such case made and provided, and submitted to the consideration of the town and by the town accepted, and ordered to be recorded, and I believe is a private way to all intents and purposes of the Statute ; it follows therefore, that no owner of the land over which the road is laid can do any act upon it, whereby the use and enjoyment of it shall be abridged, interrupted, or disturbed, without becoming answerable to you in damage therefor.

ABNER BARTLETT.

In the matter of the proposal of the Selectmen of Medford, to lay out a townway from Grove street in said Medford, to the southerly part of the river.

ROBERT BACON, of said Medford, objects to the laying out of any road in the place, way and manner, and for the purpose proposed.

And he states the following among other reasons, for his objections thereto, namely :—

Because the way or the principal part thereof, is proposed to be laid out in precisely the same place where the said Bacon has a private way granted to him and heretofore laid out for his own private use and benefit, by the said town of Medford.

Because the said proposed way will not be a thoroughfare, and cannot be of any use, as a town way, to the town of Medford.

Because there is no necessity, occasion, convenience, or benefit to the town, which requires, or will justify the laying out of any such town way.

Because, the Selectmen cannot without a violation of duty and a plain perversion of the law, lay out such a way for a town way, where there can be no reasonable or even plausible ground for alleging that the public good or common interest, or benefit of the town requires it.

Because, so far from public necessity and convenience requiring such town way, the interest of the town on the contrary requires that no such way should be laid out.

Because, if the said way shall be laid out, the private property of the said Bacon will be taken, not for public use, and without any justifiable cause.

ROBERT BACON.

*To the Inhabitants of the Town of Medford in Town-meeting
assembled.*

Robert Bacon, of the said town of Medford, respectfully remonstrates against the acceptance by the said town of the report of the selectmen of the said town of a town-way, laid out by the said selectmen on the twenty-ninth day of March last, from Grove street to the southerly part or branch of Symmes river; and your remonstrant begs leave to submit, for the consideration of the said inhabitants the following, among other reasons which he thinks may properly be urged against the acceptance of the said report, and establishment of the way laid out as aforesaid.

And, first, your remonstrant suggests, that, as far as it can be ascertained from the very indefinite description of the way laid out as aforesaid, the same, or the principal part thereof, is laid out in precisely the same place where the said town, but a few years ago, laid out a private way for the particular and private use and benefit of your remonstrant upon his petition. And your remonstrant further suggests, that the town way so laid out by said selectmen, leads only into the premises of your remonstrant, and not through or beyond them, or to any public road or thoroughfare, and cannot therefore be used as a thoroughfare or way through, which the public, or the inhabitants of the town of Medford in general, will have any occasion to or can travel. And your remonstrant further suggests, that the said town way was not laid out by the said selectmen upon the petition of any person or persons, nor has any reason been assigned for the laying it out, excepting that it will be for the convenience of some of the inhabitants of said town; which your remonstrant suggests may mean no more than two of the said inhabitants; and such reason is quite insufficient to justify the laying the same out as a public way, if it could be so laid out according to the law. And your remonstrant suggests that from the locality and course and termination of the way, it must be obvious to every one that the way so laid out, cannot be used a public or town way; and that if it could be legally laid out and used as such way, it would be of no manner of use, or benefit to the town, or any considerable part of its inhabitants or to the public, as such way; and that at the same time the town in such case will nevertheless be liable to pay the damages and keep the way in repair without deriving any advantage from it whatever. And your remonstrant insists, that the way laid out as aforesaid by the said selectmen, cannot be established and maintained in reality for a private way for two, or, at most, a very few persons, under the guise of a public town way, without committing a gross fraud upon that portion of the inhabitants of said town who derive no benefit therefrom, and shall object thereto. And your remonstrant further suggests, that there is no necessity even for a private way in the place where the said town way is laid out, excepting for your remonstrant. And although certain individuals have recently, at three several times, petitioned to the se-

lectmen of said town to have such private way laid out for them, your remonstrant has, as he believes, always been able to satisfy them that such way ought not to be laid out. And your remonstrant further suggests, that since the way aforesaid was laid out as a private way for your remonstrant, nothing has occurred to render it necessary or expedient to convert this private way, leading only into your remonstrant's premises, into a public town way ; but the same reasons now exist for the possession and enjoyment of the same by your remonstrant as and for a private way, for his use and benefit, as did exist at the time when the same was laid out as such private way ; and as did, at that time, induce the selectmen to lay the same out, and the town to accept the same as such. And your remonstrant insists, that there is no such public exigency in this case, as requires, or will justify or even authorize the laying out and establishment of the said way as a town way upon and into the private lands and property of your remonstrant ; and that, if the same shall be established as a town way, the property of your remonstrant will thereby be taken from him, not for the public use, but without any just cause or legal right for so doing. And your remonstrant further insists, that the said town way cannot be laid out and established as such for the benefit of two, or, at most, a few persons, without a plain perversion of the law, when there is no necessity, occasion, convenience or benefit to the town to use it, and no reasonable or even plausible ground for alleging that the public good, or common interest or benefit of the town, requires it ; and that, therefore, the town ought not to sanction the proceedings of the selectmen in laying the same out. And your remonstrant further insists that the damages awarded to your remonstrant by the said selectmen are merely nominal, and if the said way shall be established as a town way, your remonstrant will be compelled to appeal to a jury to assess his damages. And your remonstrant further insists, that the said town way is not laid out by said selectmen by distinct metes and bounds, in such manner as is required by law in such case, and that the proceedings of the selectmen in laying the same out are irregular, informal, and wholly unauthorized by law. Wherefore your remonstrant prays that the said report may not be accepted.

ROBERT BACON.

APRIL 5, 1841.



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